

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

FILED

at 2 O'clock & 57 min. P^M
Date 5/15/95

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *YB*

In the matter of:

DOLORES P. AUTRY

SS# 254-94-1805

Debtor

)
)
)
)
)

Chapter 13 Case

Number 94-40556

**MEMORANDUM AND ORDER
ON OBJECTIONS TO CLAIMS**

This matter comes before the Court on Debtor's objection to the claims of the Internal Revenue Service ("IRS"). A final hearing on the objection was held on April 25, 1995. For the reasons that follow, Debtor's objection will be overruled.

FINDINGS OF FACT

Debtor, Dolores P. Autry, was a debtor in a previous Chapter 13 case with her husband, whom she has subsequently divorced. (Case No. 91-42202). That case was filed in this Court on October 28, 1991, and the IRS filed a proof of claim indicating that it held a claim in the amount of \$17,328.16 for income tax obligations for which Debtor and her ex-husband were jointly liable. The IRS' claim did not, however, include any tax or related obligations for the year 1986.

On March 31, 1992, this Court confirmed their Chapter 13 plan at a payment of \$475.00 per month. The plan was expected to yield a dividend to unsecured creditors of 100%, and the parties have stipulated that Debtor and her ex-husband had the financial ability to increase their plan payments to cover any 1986 tax obligation, had the IRS included it in its proof of claim.

In August of 1993, Debtor and her ex-husband were divorced, and as a result, Debtor dismissed her joint case in March of 1994 so that she could refile her own Chapter 13 case. Debtor and her ex-husband were, at the time of dismissal, current in their payments to the Chapter 13 Trustee.

Debtor filed the Chapter 13 case presently before the Court on April 1, 1994. The IRS filed three proofs of claim in her case, one of which indicates that the IRS holds a secured claim for interest that accrued on a 1986 income tax obligation for which Debtor and her ex-husband are jointly liable. Debtor and her ex-husband had apparently satisfied the principal amount of the past-due taxes from 1986 at some point prior to filing their joint Chapter 13 case. The interest that had accrued thereon, however, remains unpaid. No explanation was presented to the Court as to why the IRS' claim in Debtor's prior joint case did not include this obligation.

Debtor testified at the hearing that the 1986 interest obligation, as well

as most, if not all of the other past-due taxes in this case, stem from her ex-husband's business. He was at that time self-employed and fell behind on his tax obligations to the IRS. Prior to their filing the first Chapter 13 case, they had been making periodic payments to the IRS in order to pay off these back taxes, including the 1986 obligation. Debtor would make the payments and the IRS would apply them to the various taxes and related obligations that were then outstanding. At some point in this process, the principal amount of the 1986 tax obligation was satisfied, and rather than applying subsequent payments to the interest that had accrued thereon, the IRS began applying payments to principal tax obligations from other years.

The IRS' application of Debtor's payments to other principal tax obligations, rather than to the 1986 interest obligation, was obviously in her best interest because it minimized the accruing interest. When the underlying obligation is satisfied, interest, presumably, stops accruing. Debtor, however, was led to believe by the statement she received from the IRS that she had satisfied all obligations relating to 1986. This belief was only heightened when (1) she visited an IRS office and she was told that she no longer owed any 1986 taxes; and (2) the IRS' claim in her first case did not include any liability for 1986.

The upshot of all this is that, had Debtor completed her first Chapter 13 case, she would have discharged any debt stemming from her 1986 taxes, including

the IRS' current claim for accrued interest. Instead, because she and her husband had divorced, she dismissed her case, and by the time she filed her second case, the IRS had caught its mistake and had included the interest from the 1986 tax obligation in its proof of claim.

Based upon these facts, Debtor asks this Court to exercise its equitable powers and disallow the IRS' claim for accrued interest on her 1986 tax obligation. In support of this request, she points out that the IRS' failure to include the obligation in its claim in her previous Chapter 13 case deprived her of the opportunity to pay the obligation. Debtor also cites section 6404(e)(1) of the Internal Revenue Code, which gives the IRS discretion to abate any interest that was assessed as a result of a deficiency attributable to an error or delay by an IRS officer or employee acting in his or her official capacity, and in essence moves this Court to order the IRS to abate the interest stemming from 1986.

The Government does not dispute that its failure to include the interest accrued on the 1986 obligation in its claim in Debtor's prior case deprived her of the opportunity to satisfy it. Nevertheless, it argues that this failure is not a sufficient basis for disallowing it as a claim in this case because it is an enforceable obligation under non-bankruptcy law. Thus, according to the Government, this Court's equitable powers are circumscribed by the plain language of the Bankruptcy Code, including

section 502(b)(1), which requires that, unless a claim is unenforceable under non-bankruptcy law, it must be allowed in bankruptcy.

CONCLUSIONS OF LAW

The parties have stipulated that the only issue before the Court is whether this Court should, under I.R.C. § 6404 and equitable principles, disallow the IRS' claim for interest on Debtor's 1986 income taxes when the IRS failed to assert this claim in Debtor's previous case. This issue is directly controlled by the Eleventh Circuit Court of Appeals' decision in In re Sanford, 979 F.2d 1511 (11th Cir. 1992), wherein the Court made clear that a bankruptcy court's use of its equitable powers in the context of claims allowance is sharply curtailed by section 502 of the Bankruptcy Code:

The bankruptcy court may not use its equitable power against the dictate of § 502, or any other section of the Bankruptcy Code. On the contrary, this equitable power "must and can only be exercised within the confines of the Bankruptcy Code." In re Sublett, 895 F.2d 1381, 1385 (11th Cir. 1990) (*quoting* Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S.Ct. 963, 969, 99 L.Ed.2d 169, 179 (1988)).

Sanford, 979 F.2d at 1514. Section 502 governs the allowance of claims in a bankruptcy case, and it, in relevant part, provides:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and *shall allow such claim* in lawful currency of the United States and in such amount, except to the extent that--

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured; . . .

11 U.S.C. §§ 502(a) and (b)(1) (emphasis added). Subsection (b) goes on to list eight other grounds for disallowing a claim, none of which are applicable in this case.¹

¹ The remaining basis for disallowance under subsection (b) are:

- (2) such claim is for unmatured interest;
- (3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
- (4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;
- (5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;
- (6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds--
 - (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of--
 - (i) the date of the filing of the petition; and
 - (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
 - (B) any unpaid rent due under such lease, without acceleration,

Section 502 thus makes clear that unless a claim falls under one of the grounds listed in subsection (b), it must be allowed as a claim against the bankruptcy estate. The only ground potentially implicated by Debtor's objection is subsection (b)(1), which requires that "a claim against the bankruptcy estate . . . not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the debtor outside of bankruptcy." Sanford, 979 F.2d at 1513. This is where Debtor's objection fails: Outside of bankruptcy, the IRS' claim for underpayment interest is fully enforceable against Debtor under I.R.C. § 6601, and, as the Government correctly point out, I.R.C. § 6404(e) simply gives the IRS the discretion to make certain abatements if circumstances dictate. It is not a mandatory provision, and this Court

on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds--

- (A) the compensation provided by such contract, without acceleration, for one year following the earlier of--
 - (i) the date of the filing of the petition; and
 - (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus
 - (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;
- (8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable tax on wages, salaries, or commissions earned from the debtor; or
- (9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

11 U.S.C. §§ 502(b)(2) through (9). Note that subsection (9) was added to the Code by the Bankruptcy Reform Act of 1994, and as a result, is inapplicable to this case.

is in no more of a position to force the IRS to waive its claim to interest than it would be to force any other creditor to waive such a claim. However, given the amount in question, this Debtor's single-handed struggle to pay debts which as between her and her ex-husband should, in all fairness, be paid by him, and the actions of the IRS in her prior case, I can envision no more compelling circumstances for waiving this claim. Accordingly, if I had authority to do so, I would order the IRS to take such an administrative action. Because I do not, I will not, but urge the Service to do the right thing for Mrs. Autry.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Debtor's Objection to the claims of the Internal Revenue Service is hereby overruled.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 9th day of May, 1995.